IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE V.K.MOHANAN

WEDNESDAY, THE 26TH SEPTEMBER 2007 / 4TH ASWINA 1929

FAO.No. 275 of 2007()

AGAINST THE ORDER DATED 10/08/2007 IN IA 3340/2007 IN OS.246/2007 of II ADDL.SUB COURT,ERNAKULAM

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APPELLANT/PETITIONER/PLAINTIFF

SN.D.P. BRANCH NO.2697,
SOUTH IRIMPANAM, REPRESENTED BY ITS (1) PRESIDENT,
P.K.SIVADASAN, PULIKKAL HOUSE, (2) SECRETARY,
P.V.SIVAN, AGED 54, S/O.VELAYUDHAN,
PALAPPARAMBIL, IRIMPANAM.

BY ADV. SRI.M.S.UNNIKRISHNAN

RESPONDENTS: RESPONDENT/DEFENDANT

VIJAYALAKSHMI PADMANABHAN,
AGED ABOUT 50 YEARS, W/O.LATE PADMANABHAN,
BHASKARAN COLONY, IRIMPANAM.

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION ON 19/09/2007, THE COURT ON 26/09/2007 DELIVERED THE FOLLOWING:

P.R.RAMAN & V.K.MOHANAN, JJ.

F.A.O.NO.275 OF 2007

Dated this the 26th day of September, 2007

JUDGMENT

Raman, J.

Appellant is the plaintiff and the petitioner in I.A.NO.3340/2007 in O.S.246/2007 on the file of the IInd Additional Sub Court, Ernakulam. The said application was filed under Order XXXIX Rules 1 and 2 of the C.P.C. for a temporary injunction restraining the respondent from disposing the plaint schedule property. The suit was one for specific performance of the agreement dated 3/10/2006. During the pendency of the suit the present I.A. was filed for an injunction restraining the defendant from disposing the plaint schedule property, till the disposal of the suit.

2. According to the appellant, the plaintiff and the defendant entered into an agreement dated 3/10/2006 whereunder the defendant agreed to sell the property mentioned therein to the appellant for a total sale consideration of Rs.4 lakhs. An amount of Rs.1 lakh was given by way of advance. Sale deed has to be executed within a period of six months. According to the appellant, he was ready and willing to

perform his part of the agreement; but the respondent was not prepared to execute the sale deed within time and the appellant sent a telegram by which the respondent was asked to execute the sale deed and they were present in the Sub Registrar's Office. Since there was no response, the suit was filed.

3. As per I.A.No.2634/2007 filed by the appellant, the property was attached. The respondent, after entering appearance, offered to furnish security. The attachment was revoked after depositing the amount by the respondent. Thereafter, the present application was filed for an injunction.

4. It was contended by the respondent before the court below that the property was agreed to be sold by her for raising money for the marriage of her daughter. As agreed, the balance consideration was not paid by the appellant, the marriage could not be conducted. It was contended that the appellant had no sufficient funds to purchase the property, as per the terms of the agreement. It was also contended that the appellant had no idea to purchase the property; but the only idea is to safeguard the amount advanced and prayed for dismissal of the suit and

also opposed the injunction application. The court below by the impugned order dismissed the injunction application, against which this appeal is filed. Exts.A1 to A6 were produced by the appellant. Ext.A1 is the original of the agreement, ExtA2 is the original of the location sketch of the plaint schedule property, Ext.A3 is the photocopy of the ownership certificate, Ext.A4 is the photocopy of the pattayam issued to the defendant, Ext.A5 is the encumbrance certificate and A6 is the photocopy of the D.D. issued in the name of the defendant. Either side adduced any oral evidence. There was no document marked on the side of the respondent. The court below based on Ext.A2 to A5, found that the respondent convinced the plaintiff of the measurement of the property and also convinced the documents of title, encumbrance etc. and entered a prima facie finding. Ext.A6 D.D. is dated 3/5/2007. The suit was instituted on 4/4/2007. As per Ext.A1 agreement, the period of agreement, which was six months from 3/10/2006, expired on 2/4/2007. According to the appellant, he was ready with the cash even before that date, but no demand notice was issued to the plaintiff for specific performance before 2/4/2007. According to the appellant, he sent a

telegram. But no document evidencing thereof was produced. True that the respondent admitted that she got a photocopy of the telegram from the postal authorities recently; but there is no admission that she received the telegram before the expiry of the period of agreement. Therefore, this is an aspect where the appellant ought to have adduced a prima facie evidence about the telegram having been received by the respondent. Admittedly no notice was issued by the appellant asking the respondent to be present in the Registrar's Office and informed her that the balance consideration is ready to be paid to her. The court has to form a prima facie opinion and take into consideration the balance of convenience before any order is passed in favour of the appellant. The court below, on an analysis of the evidence on record, held that there is no prima facie case for the plaintiff to prove the readiness and willingness for specific performance.

6. Though the learned counsel appearing for the appellant challenged the above finding; no material was placed before us to come to a different conclusion than one reached by the court below. In such circumstances, we find no merit in this appeal.

However, we make it clear that the prima facie finding of the court

below will not in any way influence the mind of the court while deciding the issue in the suit and the same has to be adjudicated based on the evidence adduced by the parties.

With the above observation the appeal is dismissed.

P.R.RAMAN,
Judge.

V.K.MOHANAN,
Judge.

kcv.